



May 19, 2011

**VIA ECF AND HAND DELIVERY**

Hon. Susan D. Wigenton, U.S.D.J.  
U.S. District Court for the District of New Jersey  
Martin Luther King, Jr. Federal Building  
& U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

Jonathan Short  
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**Re: The Hershey Company et al. v. Promotion In Motion, Inc.**  
**Civil Action No. 2:07-cv-01601-SDW-MCA**

Dear Judge Wigenton:

On behalf of all parties in this matter, we enclose a copy of the Joint Stipulation Concerning Defendant's Motion to Determine Whether to Seal Defendant's Proposed Findings of Fact and Conclusions of Law. The parties respectfully request that Your Honor endorse and enter the enclosed document on the docket.

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Respectfully,

A handwritten signature in black ink, appearing to read "Jonathan Short".

Jonathan Short

Enclosure

Cc: Counsel of Record (Via ECF)

BOSTON

HARTFORD

NEW YORK

NEWARK

PHILADELPHIA

STAMFORD

WILMINGTON

# **ATTACHMENT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

-----X  
THE HERSHEY COMPANY and HERSHEY  
CHOCOLATE & CONFECTIONERY  
CORPORATION,

Plaintiffs-Counterclaim Defendants,

v.

PROMOTION IN MOTION, INC.,

Defendant-Counterclaim Plaintiff.  
-----X

Civil Action No:  
07-CV-1601 (SDW)

**JOINT STIPULATION CONCERNING DEFENDANT'S MOTION  
TO DETERMINE WHETHER TO SEAL DEFENDANT'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

WHEREAS, defendant Promotion in Motion, Inc.'s ("PIM's") Trial Brief and Proposed Findings of Fact and Conclusions of Law (collectively, "PIM's Pretrial Filings") include paragraphs that are based on information contained in documents produced by plaintiffs The Hershey Company and Hershey Chocolate & Confectionary Corporation (collectively, "Hershey") and designated "Confidential" pursuant to the Protective Order entered in this case on December 3, 2008;

WHEREAS, the references to information that is contained in documents that Hershey has designated Confidential under the Protective Order include PIM's Trial Brief at p. 1, ¶ 2; p. 14, ¶ 2; and p. 19, ¶ 3, PIM's Proposed Findings of Fact at ¶¶ 64-70, 90, 116, 156-57, and PIM's Conclusions of Law at ¶ 43;

WHEREAS, PIM has filed a Motion to Determine Whether to Seal Defendant's Trial Brief and Proposed Findings of Fact and Conclusions of Law (the "Motion"), dated May 4,

2011, which seeks an order that PIM is not required to file its Pretrial Filings under seal on the ground, *inter alia*, that the references to Hershey's confidential information contained therein are not specific enough to justify sealing;

WHEREAS, the Motion does not challenge the confidentiality of the underlying documents themselves;

WHEREAS, Hershey is willing to withdraw its Confidentiality designations with respect to the confidential information referenced in PIM's Pretrial Filings but wishes to maintain the confidentiality of certain other information contained in the underlying documents on which PIM's Pretrial Filings are based because such other information is competitively sensitive, and if disclosed to Hershey's competitors, would provide them with an unfair competitive advantage;

WHEREAS, the documents at issue are Defendant's Trial Exhibits 205, 206, and 210;

WHEREAS, the parties have conferred in an effort to resolve this motion without intervention of the Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, through their respective counsel, and subject to the Court's approval:

1. Hershey does not oppose the Motion and agrees to withdraw its Confidential designation with respect to the references contained in PIM's Pretrial Filings;
2. The parties shall attempt to jointly agree upon redacted versions of Defendant's Trial Exhibits 205, 206, and 210 to be introduced at trial in order to permit PIM to use the information referenced in its Pretrial Filings in open Court while at the same time

permitting Hershey to protect other confidential and irrelevant information contained in such documents from public filing.

WHEREFORE, the parties respectfully request that the Court so Order.

Dated: May 19, 2011

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John E. Flaherty  
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SO ORDERED,

Hon. Susan D. Wigenton, U.S.D.J.